

U.S. BANKRUPTCY COURT
FILED
NEWARK, NJ

Neelay Das

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-and-

2023 SEP 12 P 2:36

JEANNE A. NAUGHTON

BY:



Gabriel Rostom

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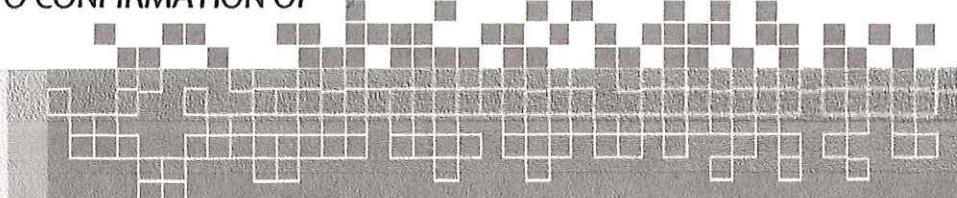
09/11/2023

Honorable Vincent F. Papalia
United States Bankruptcy Judge for the District of New Jersey
50 Walnut Street
Newark, NJ 07102
Courtroom 3B

Dear Honorable Judge Papalia,

We are attaching an Amended Copy of Redacted Version of our following Objection Letter that has been docketed as docket no. 2124, since the screenshots attached in Exhibits B - D in that document, as printed out by the process server who hand-delivered the document to the Court, don't show up clearly:

BED BATH AND BEYOND COMMON STOCK EQUITY INTEREST HOLDERS' LIMITED OBJECTION TO DEBTORS' PROPOSED REVISED ORDER (I) (A) CONDITIONALLY APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT, (B) APPROVING THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF



THE PLAN, (C) APPROVING THE FORMS OF BALLOTS AND NOTICES IN
CONNECTION THEREWITH, (D) SCHEDULING A COMBINED DISCLOSURE
STATEMENT APPROVAL AND PLAN CONFIRMATION HEARING AND
CERTAIN DATES AND DEADLINES WITH RESPECT THERETO, AND (E)
GRANTING RELATED RELIEF, AND (II) (A) EXTENDING THE DEBTORS'
EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT
ACCEPTANCES THEREOF PURSUANT TO SECTION 1121 OF THE
BANKRUPTCY CODE AND (B) GRANTING RELATED RELIEF

We request that the above attached document please be filed and docketed as an Amended Version of the above docket no. 2124 document.

We are also attaching the below Notice and respectfully request that it be filed and docketed, as well.

NOTICE OF BED BATH AND BEYOND COMMON STOCK EQUITY
INTEREST HOLDERS' ASSERTION AND PRESERVATION OF RIGHTS OF
SETOFF AND RECOUPMENT

Sincerely,



Neelay Das



Gabriel Rostom

Gabriel Rostom (Sep 11, 2023 13:38 GMT+2)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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-and-

Neelay Das
[REDACTED]
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In Re:
BED BATH & BEYOND INC., et al.,
Debtors.¹

U.S. BANKRUPTCY COURT
FILED
NEWARK, NJ

2023 SEP 12 P 2:36

JEANNE A. NAUGHTON
BY: [Signature] CLERK

Chapter 11

Case No. 23-13359 (VFP)
(Jointly Administered)

**BED BATH AND BEYOND COMMON STOCK EQUITY INTEREST HOLDERS' LIMITED
OBJECTION TO DEBTORS' PROPOSED REVISED ORDER (I) (A) CONDITIONALLY
APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT, (B) APPROVING THE
SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE
PLAN, (C) APPROVING THE FORMS OF BALLOTS AND NOTICES IN CONNECTION
THEREWITH, (D) SCHEDULING A COMBINED DISCLOSURE STATEMENT APPROVAL AND
PLAN CONFIRMATION HEARING AND CERTAIN DATES AND DEADLINES WITH RESPECT
THERETO, AND (E) GRANTING RELATED RELIEF, AND (II) (A) EXTENDING THE DEBTORS'
EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE AND (B) GRANTING RELATED RELIEF

The undersigned holders of equity interests in Bed Bath And Beyond's Common Stock which has traded on Nasdaq exchange under the symbol "BBBY" and now trades over the counter under the symbol "BBBYQ", hereby object (this "Objection") to the Debtors' Proposed *Revised Order (I) (A) Conditionally Approving The Adequacy Of The Disclosure Statement, (B) Approving The Solicitation And Notice Procedures With Respect To Confirmation Of The Plan, (C) Approving The Forms Of Ballots And Notices In Connection Therewith, (D) Scheduling A Combined Disclosure Statement Approval And Plan Confirmation Hearing And Certain Dates And Deadlines With Respect Thereto, And (E) Granting Related Relief, And (II) (A) Extending The Debtors' Exclusive Periods To File A Chapter 11 Plan And Solicit Acceptances Thereof Pursuant To Section 1121 Of The Bankruptcy Code And (B) Granting Related Relief* [D.I. 1692] (the "Motion")², and in support of that Objection state as follows:

PRELIMINARY STATEMENT

1. Pursuant to the Debtors' Proposed Plan and Solicitation and Voting procedures, General Unsecured Claim holders have been classified in class 6, which includes 2014 Senior Unsecured Notes Claim Holders and for voting purposes their claims only will be the unpaid principal amount of the applicable positions such Holder held as of the Voting Record Date. Under Exhibit 3 *Solicitation and Voting Procedures* of the Motion section (iv).2 "Class 6 2014 Senior Unsecured Notes Claims" it is stated that the claim amounts for voting purposes for Holders of Class 6 2014 Senior Unsecured Notes Claims will be established by reference to the books and records of the applicable indenture trustee, or, as the case may be, in the amount of such Claims held by each Beneficial Holder through its Nominee as of the Voting Record Date as evidenced by the securities position report(s) from the DTC or other applicable depository firm. Also, pursuant to the Debtors' Plan and Solicitation and Voting procedures, holders of equity interests in Bed Bath And Beyond's Common Stock (the "Shareholders") are deemed to have "Interests in BBB" per the *Release Opt-Out Form (Attachment A)* in the Motion and so are classified under class 9 per

²Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

the table in section III.D in the Motion, even though the *Release Opt-Out Form* states that such holders are classified under class 8, which presumably is a typographical error. The treatment for such holders per the table in section III.D in the motion is specified as follows: "*In full and final satisfaction of each Allowed Interest in BBB, each Allowed Interest in BBB shall be canceled, released, and extinguished, and will be of no further force or effect and no Holder of Interests in BBB shall be entitled to any recovery or distribution under the Plan on account of such Interest*". Further, Article III.B of the *Amended Joint Chapter 11 Plan Of Bed Bath & Beyond Inc. And Its Debtor Affiliates* [D.I. 1688] (the "Proposed Plan") states the following about the above treatment, which is also described in Article III.B.9 of the Proposed Plan: "*Subject to Article VI hereof, each holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors and the holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the later of the Effective Date and the date such holder's Claim or Interest becomes an Allowed Claim or Allowed Interest or as soon as reasonably practicable thereafter.*" Pursuant to the above description and the meaning of the word "Allowed" in this context, as specified in the Proposed Plan [D.I. 1688] section I.A.13, shareholders get any distribution in equity or cash proceeds, before their equity interests are extinguished, only if they enter into an agreement with the Debtors to that effect, as underlined above and such an agreement currently doesn't exist. Also, however, as explained in the Background and Argument sections, Equities swaps trading data downloaded from the DTCC Public Price Dissemination (PPD) Website³ shows circumstantial evidence of still open short positions in Bed Bath And Beyond's Common Stock being used to hedge bonds corresponding to 2014 Senior Unsecured Notes due in 2024. Also, as specified in paragraph 2 of D.I. 1438 the Proposed Plan and the Motion were formulated after a "robust diligence sharing process" with the Official

³ <https://pddata.dtcc.com/gtr/dashboard.do>, Quick Reference Guide available at: https://kgc0418-tdw-data-0.s3.amazonaws.com/gtr/static/gtr/docs/RT_PPD_quick_ref_guide.pdf

Sosnick's testimony in the July 18 Court Hearing the Debtors reached an agreement on the terms of the Proposed Plan with UCC and the DIP lenders. All holders of Senior Unsecured Notes are represented by The Bank of New York Mellon, the trustee for all such notes, on the UCC. **Any holder of Senior Unsecured Notes who has an open short position in Bed Bath And Beyond's Common Stock while voting for the Proposed Plan would be falsely certifying that Bed Bath And Beyond owes them the unpaid principal amount of the applicable positions or the amount established by reference to the books and records of the applicable indenture trustee, or, as the case may be, in the amount of such Claims held by each Beneficial Holder through its Nominee as of the Voting Record Date as evidenced by the securities position report(s) from the DTC or other applicable depository firm, while in fact the actual amount owed should be the above amount subtracted by the full proceeds from their short position assuming they never have to close that position, because the Proposed Plan doesn't offer any distribution of proceeds to the shareholders in exchange for tendering their shares which otherwise would prompt shareholders who have lent their shares to recall them back, thereby, in turn, causing the short positions to be closed. This will be a violation of Securities and Exchange Act Sections 17(a)(2), potentially 17(a)(1), potentially SEC Rules 10b5(a) and 10b5(b), which in turn will make the Proposed Plan unconfirmable, due to violation of section 1129(a)(3) of the Bankruptcy Code.** Also, on January 5, 2023, Bed Bath And Beyond reported in a press release⁴ that the previously commenced exchange offer and consent solicitation with respect to its unsecured senior notes for a new series of convertible notes, as previously reported in a press release on October 18, 2022⁵, was terminated after the offer expired on January 04, 2023, after multiple extensions of the expiry date, without all note holders tendering their notes. The press release added that conditions to the exchange offer and consent solicitation were not satisfied, with, as of last reporting per December 20, 2022 8K SEC filing⁶ only 18.21% of notes due 2024, 24.77% of notes due 2034 and 11.19% of notes due 2044 being tendered. In a

⁴ <https://www.sec.gov/Archives/edgar/data/886158/000119312523002004/d427733dex991.htm>

⁵ <https://www.sec.gov/Archives/edgar/data/886158/000119312522264253/d411604dex991.htm>

⁶ <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000886158/000119312522308768/d432604d8k.htm>

snapshot of the post 2022-12-03 Equities swaps trading data downloaded from the DTCC PPD website shown in **Exhibit D** it can be seen that, there were a flurry of CFD⁷ swap transactions with very large notional amounts of up to \$2 million USD per transaction, which were hedging corresponding large short positions in days leading up to the termination of the notes exchange offer. Also, FINRA Short Sale Volume Data⁸ shows that this coincided with a big jump in the short sale volume to 60.64% (5,289,670 short sale volume, 8,723,023 total volume) on January 03, 2023, the day before expiry of the Exchange Offer and this caused a 7.97% drop in BBBY price per share from \$2.51 the previous day to \$2.31⁹ at the market close on that day. This would have definitely deterred any unsecured note holders who were yet to tender their notes in exchange for convertible notes and were contemplating on doing so, as exchanging for convertible notes makes economic sense if price per share is expected to appreciate. The failure of the exchange offer prompted Bed Bath And Beyond to issue a possible bankruptcy warning in the January 05, 2023 press release. Moreover, as seen from the “Swap Transaction Publish Date” column in the snapshot of the Equity Swaps data in **Exhibit E**, the data for the flurry of CFD swap transactions hedging for the large short positions that were opened up leading up to the possible bankruptcy warning was not published months later until March 2023, indicating a possible attempt to hide those transactions. **This shows a scheme where aggressive short selling by bondholders and/or their affiliates, combined with the refusal by the bondholders to tender old unsecured notes was instrumental in causing a failure of the Exchange Offer, which in turn eventually led to the company filing for Chapter 11 bankruptcy protection. Now, representatives of the same bondholders (BNY Mellon and UCC) have collaborated with Bed Bath and Beyond to devise a Chapter 11 plan, which causes the short positions opened by the bondholders and/or their affiliates never to be closed and thereby they walk away with large proceeds from their open short positions. This is textbook violation of SEC Rule 10b5(a) and Securities and Exchange Act Section 17(a)(1), which in turn will make the Proposed Plan unconfirmable, due to violation of section 1129(a)(3) of the Bankruptcy Code, as provisions of the Proposed Plan**

⁷ Contract For Difference

⁸ <https://cdn.finra.org/equity/regsho/daily/CNMSshvol20230103.txt>

⁹ <https://finance.yahoo.com/quote/BBBYQ/history?p=BBBYQ>

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are forbidden by law as shown above. The issue is being raised now so Debtors may resolve the situation by amending the Proposed Plan to offer distribution of proceeds to the common stock equity security holders or alternatively, by mandating that any holders of Senior Unsecured Notes who have open short positions in Bed Bath And Beyond's Common Stock close their short positions, before voting on the amended plan.

2. Pursuant to the Debtors' Proposed Plan and Solicitation and Voting procedures, Holders of Claims or Interests will be deemed to have released certain third parties unless they complete and submit an electronic Opt-Out Form through the E-Ballot Portal or Public Securities Opt-Out Portal so that it is actually received by the Notice and Claims Agent on or before the Voting Deadline. Section 524(e) of the Bankruptcy Code specifically provides that the discharge of claims against the Debtors upon confirmation of a chapter 11 plan pursuant to section 1141(d) of the Bankruptcy Code does not affect the pre-confirmation liability of non-debtor entities. In *First Fid. Bank v. McAteer*, 985 F.2d 114, 118 (3d Cir. 1993) the Third Circuit Court ruled that, where releasing parties have consented to a provision in a plan of reorganization that releases claims against non-debtors, such releases will be approved on the basis of general principles of contract law. Under basic contract law principles, consent may be express or manifested by conduct. Parties must "objectively manifest their acceptance and intent to be bound by a contract [.]" *Craddock v. LeClair Ryan, P.C.*, 2016 WL 1464562, at *8 (E.D. Va. Apr. 12, 2016). By the same token, a legal right may be waived only if it is "knowingly, voluntarily and intentionally abandoned." *Luitpold Pharm., Inc. v. Ed. Geistlich Sohne A.G. Fur Chemische Industrie*, 784 F.3d 78, 95 (2d Cir. 2015). In *re Washington Mutual, Inc.*, 442 B.R. 314 (Bankr. D. Del. 2011), where the Court ruled that "any third party release is effective only with respect to those who affirmatively consent to it by voting in favor of the Plan and not opting out of the third party releases." Id. at 355 (emphasis added). The Court clarified that an "opt out mechanism is not sufficient to support the third party releases . . . particularly with respect to parties who do not return a ballot (or are not entitled to vote in the first place). Failing to return a ballot is not a sufficient manifestation of consent to a third party release." Id. See also *In re Emerge Energy Services LP*, 19-11563 (KBO), 2019 WL 7634308, *18 (Bankr. D.

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Del. Dec. 5, 2019) (Court ruled that consent cannot be inferred by the failure of a creditor or equity holder to return a ballot or opt-out form). In *re: PURDUE PHARMA, L.P.* (USDC SDNY 2021) Case 7:21-cv-08566-CM Document 100¹⁰ the District Court held that nothing either express or implied in the Bankruptcy Code gave a bankruptcy court statutory authority to confirm a plan containing non-consensual third party releases. Among other things, the District Court rejected the argument that Bankruptcy Code sections 105(a), 1123(a)(5), 1123(b)(6) and 1129(a)(1), either singularly or in the aggregate, permit the approval of third party releases, noting that none of the sections could, in context, be read to grant such a wide-ranging ability to release the claims of non-debtors against non-debtors. The District Court similarly reasoned that Congress's enactment of Bankruptcy Code sections 524(g) and (h)—which permit third party releases but only in asbestos cases—indicated that such releases were not permissible in other cases. In *Patterson v. Mahwah Bergen Retail Group, Inc* Civil No. 3:21cv167 (DJN) (USDC EDVA)¹¹ the District Court also held that the bankruptcy court had been incorrect to infer consent from parties' inaction in failing to affirmatively opt-out of the releases. The District Court held that while non-consensual third party releases may, when jurisdiction exists, be approved, they must satisfy the Fourth Circuit's seven factor test in *Behrmann v. Nat'l Heritage Found., Inc.*, 663 F.3d 704 (4th Cir. 2011), and even then, they should be used "cautiously and infrequently." The seven factor test adopted by the Fourth Circuit in Behrmann (following the Sixth Circuit's ruling in *In re Dow Corning Corp.*, 280 F.2d 648 (6th Cir. 2002)), only permits non-consensual third party releases where: (1) there is an identity of interests between the debtor and the third party such that a suit against the non-debtor will deplete the assets of the estate; (2) the non-debtor has contributed substantial assets to the reorganization; (3) the injunction is essential to reorganization; (4) the impacted class, or classes, has overwhelmingly voted to accept the plan; (5) the plan provides a mechanism to pay for all, or substantially all claims, of the class or classes affected by the injunction; (6) the plan provides an opportunity for those claimants who choose not to settle to recover in full and; and (7) the bankruptcy court made a record of specific factual

¹⁰ <https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2021/12/Purdue-Appeal-Decision-and-Order.pdf>
¹¹ <https://reorg-research.com/pdf/3714294.pdf>

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findings that support its conclusions. The non-consensual third party release provisions in the Motion do not meet the above test, specifically the above underlined factors. Also, as discussed in paragraph 1, if the Motion is approved, as it is, it leaves the possibility of Securities Fraud being committed by the Senior Unsecured Notes Holders who opened up short positions in Bed Bath And Beyond's Common Stock and are represented by third party UCC. Non-consensual third party releases against such potential fraud claims have typically not been approved by courts. **The issue is being raised now so that Debtors may resolve the situation by changing the opt-out portion of their ballots to an opt-in form. Doing so will ensure that only those claimants who actually receive the forms and actually consent to give third-party releases, will be deemed to provide the same. Approval of the solicitation procedures should be denied absent this change being made.**

3. In the Motion the debtors are seeking an extension of the exclusivity period. Per article XI.B.1 of the Motion the Debtors state that as of the end of the 2022 fiscal year, they had approximately \$1.6 billion of U.S. federal net operating losses (the "NOLs") and \$143 million of disallowed business interest carryovers under section 163(j) of the Tax Code (the "163(j) Carryovers"). Per the latest filed SEC 10K form¹² on page 63 the Debtors state that during the year ended February 25, 2023 shares were reissued out of treasury stock at a weighted-average cost of \$44.27 per share, for a total cost of \$3.1 billion. The difference between the cost of the treasury stock and the consideration received is recorded as a reduction to retained earnings on the consolidated balance sheets. These extensive deferred tax assets could have been used by Debtors to market a maximized value of the estate to potential acquirers for a takeover transaction pursuant to I.R.C. § 382(l)(5), I.R.C. § 382(c), § 1.1032-1(b) and I.R.C. § 1212(a)(1)(B). However, the asset sale transactions that have been pursued and executed, so far, by the debtors have been of assets that are parts of the estate instead of the entire estate itself, which would have made the transaction pursuant to I.R.C. § 382(l)(5), I.R.C. § 382(c) provisions. As a result, these transactions were not value maximizing and resulted in inadequate proceeds, which in turn were insufficient for effecting a successful turnaround, so far. This shows that the debtors have not fulfilled their fiduciary duty to the shareholders of pursuing a value

¹² <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000886158/000088615823000059/bbby-20230225.htm>

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maximizing turnaround strategy and now, per the currently Proposed Plan and Motion shareholder equity is expected to be extinguished with no distribution to shareholders.

Also, in multiple court filings [D.I.s: 10, 25, 1437 and 1438], like the Motion, the debtors have described GameStop Executive Chairman Ryan Cohen's investment in and exit from Bed Bath And Beyond in 2022 in unfavorable terms, blaming him for the decline in the stock price, while completely ignoring investment and exit of Jake Freeman from Freeman Capital, who took a comparable investment position and exited one day before (08/16/22)¹³ Ryan exited from his position. On the other hand, Ryan Cohen has been listed as an Interested Party, as of 01/19/2023, in multiple dockets [D.I.s: 178, 179, 180 and 181]. This is indicative of Bed Bath And Beyond Board of Directors' prejudice towards Ryan Cohen, which might have possibly prevented a value maximizing takeover deal, as described above, where Ryan Cohen is an acquiring party and the same situation may continue, if the exclusivity period is not terminated. **So, we respectfully request that the Debtors' request for extension of the exclusivity period be denied and also that the currently active exclusivity period be terminated, so that third parties may present alternate value maximizing Chapter 11 plan(s), which may generate better proceeds for all stakeholders.**

BACKGROUND

4. On April 23, 2023 (the "Petition Date") the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code").

5. The Debtors remain in possession of their assets and continue to manage their businesses as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

¹³ SEC 13G Form corresponding to Jake Freeman's entry into BBBY:

<https://www.sec.gov/Archives/edgar/data/1939210/000193921022000002/test.htm>

SEC 13G Form corresponding to Jake Freeman's exit from BBBY:

<https://www.sec.gov/Archives/edgar/data/1939210/000193921022000004/test.htm>

SEC 13D/A Form showing Ryan Cohen's updated stake after the stock repurchases by the company:

https://www.sec.gov/Archives/edgar/data/1822844/000119380522001199/e621886_sc13da-rcv.htm

SEC 13D/A Form showing Ryan Cohen's exit from BBBY, one day after Jake Freeman's exit:

sec.gov/Archives/edgar/data/1822844/000092189522002496/sc13da313351002_08182022.htm

6. On or about May 5, 2023, the United States Trustee for Region 3 (the “U.S. Trustee”) appointed the Committee to represent the interests of all unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code. The members appointed to the Committee are: (i) Ryder Integrated Logistics, Inc.; (ii) The Bank of New York Mellon, as Indenture Trustee for All 2014 Senior Unsecured Notes Holders; (iii) Intersoft Data Labs Inc; (iv) KDM P.O.P. Solutions Group; (v) Shark Ninja Operating LLC; (vi) Lenox Corporation; and (vii) SITE Centers Corp. See Notice of Appointment of Official Committee of Unsecured Creditors [D.I. 218].

7. Prior to the Petition Date, on July 21, 2022 in a Letter¹⁴ addressed to Bed Bath And Beyond Board of Directors, attached as an Exhibit to his SEC Form 13G¹⁵ filing, Jake Freeman from Freeman Capital revealed that it had acquired 6.21% stake in the company and proposed a turnaround plan for the company. In the letter he also revealed that Freeman Capital and affiliates were owners of the 2014 Unsecured Notes expiring in 2024. In the letter he also proposed a turnaround plan for Bed Bath And Beyond that involved exchanging the existing unsecured notes with a series secured notes, expiring on 8/1/2024, 8/1/2029, 8/1/2033. In addition, the letter proposed issuance of warrants to purchase common shares expiring on 8/1/2029 and 8/1/2033 and convertible notes to purchase shares that would mature on 07/22/28.

8. Prior to investing in Bed Bath And Beyond Jake jointly published a paper with Vivek Kapoor from Volaris Capital Management titled *Irreducible Risks of Hedging a Bond with a Default Swap*¹⁶. The abstract of the paper states “*The results show that there are irreducible risks when hedging a defaultable bond with a CDS; these irreducible risks increase with the magnitude of the premium/discount of the bond and decrease as the correlation between default time and recovery increase*”. Before starting Volaris Capital Management Vivek Kapoor used to work for Credit Suisse¹⁷, which is still dealing¹⁸ with the fallout from the failure of Archegos Total Return swaps back in 2021.

¹⁴ <https://www.sec.gov/Archives/edgar/data/1939210/000193921022000002/BBBYL.htm>

¹⁵ <https://www.sec.gov/Archives/edgar/data/1939210/000193921022000002/test.htm>

¹⁶ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3405367

¹⁷ <https://www.bloomberg.com/news/articles/2017-05-02/ex-credit-suisse-trader-said-to-lure-1-6-billion-of-client-cash>

¹⁸ <https://www.investmentweek.co.uk/news/4120805/credit-suisse-receives-record-fine-archegos-failures>

**Circumstantial Evidence Of Still Open Short Positions In Bed Bath And Beyond's Common Stock
Being Used To Hedge 2024 Bonds**

1. A search of the Credit Default Swaps trading data downloaded from the DTCC Public Price Dissemination (PPD) Website¹⁹ for the ISIN numbers US075896AA80, US075896AB63 and US075896AC47 of Bed Bath And Beyond Senior Unsecured Notes (Bonds) did not bring up any such swaps hedging the Bonds, but the data does show these swap financial instruments being used to hedge other corporate bonds. This would be in alignment with the paper published by Jake Freeman, as discussed in the Background section, which found that hedging bonds using CDS was not that effective. However, a search of the unzipped .csv format Daily Equity Swaps trading data downloaded from the same above website, using the links shown in Exhibit A below, for the ISIN number US0758961009 corresponding to Bed Bath And Beyond common stock brings up a lot of swap transactions which have been collected in a spreadsheet²⁰ showing the data prior to 2022-12-03 and in another spreadsheet²¹ showing the data post 2022-12-03, since they are published in different formats by DTCC. These swaps are used to hedge against losses in short positions and they are either of the type Total Return Swap or Contract For Difference (CFDs) as seen in the "Product ID" column in the spreadsheet with reference to this article²² for explanation of the various Product IDs. This article²³ explains how taking a long position in CFDs hedges short positions in stock. The swap transactions highlighted in the spreadsheet are those with a high notional amount and with expiration dates close to one of the proposed secured notes expiry dates, per the turnaround proposal, in Jake Freeman's letter to Bed Bath and Beyond board, as described in the background section. Comparison of a screenshot this data (Exhibit B) with 2024 bonds trading data screenshot from FINRA²⁴ (Exhibit C) for the same date 07/07/22 shows large swap positions being opened up or amended close to large bond purchases, thereby indicating that the bonds were being hedged using short transactions corresponding to these swap positions. The fact that most of the highlighted CFD expiry

¹⁹ <https://pddata.dtcc.com/gtr/dashboard.do>

²⁰

https://docs.google.com/spreadsheets/d/e/2PACX-1vRkigsLWF83cpBG9JRKui7QTheDr_mrOCyiPKdwXK8qHCLU6J8RpvUNmu-zSOBwPaXpjloj6zCTVsJH/pubhtml

²¹

https://docs.google.com/spreadsheets/d/e/2PACX-1vTQwNR3w9Ye8SK-e_EJkUo19BLHXJIYZuhPUsEQ-RWddHNzx07HJxyFPHMmjz-ipMyoxqU_KEe1QyHu/pubhtml

²² <https://www.clarusft.com/variance-swaps-and-other-equity-derivatives-on-sdr/>

²³ <https://www.contracts-for-difference.com/strategies/CFDs-hedge.html>

²⁴ <https://www.finra.org/finra-data/fixed-income/trade-history?cusip=075896AA8&bondType=CA>

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dates align with the expiry dates of proposed secure notes, per Jake Freeman's proposal in his letter to Bed Bath And Beyond Board of Directors provide circumstantial evidence that he and/or his affiliates had already opened up the corresponding short positions to hedge those proposed bonds, even before the proposal was accepted by the board, since those short positions could be used to hedge existing bond holdings. None of the highlighted CFDs show up as being terminated thereby showing that the corresponding short positions are still open. This data supports the need for one of the remedies requested in paragraph 1, under the Preliminary Statement section.

Date: 08/31/2023


Gabriel Rostom (Au 31, 2023 08:22 GMT+2)

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Date: 08/31/2023


Neelay Das


EXHIBIT A

Links To Download Equity Swaps Trading Data

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https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_09.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_12.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_13.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_14.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_15.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_16.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_20.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_21.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_22.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_23.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_26.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_27.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_28.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_29.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_06_30.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_03.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_05.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_06.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_07.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_10.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_11.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_12.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_13.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_14.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_17.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_18.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_19.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_20.zip

https://kgc0418-tdw-data-0.s3.amazonaws.com/sec/eod/SEC_CUMULATIVE_EQUITIES_2023_07_24.zip

EXHIBIT B**Equity Swaps Trading Data Snapshot For 07/07/22**

NI419 | 7/7/2022 23:18:33

C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z		
1 Product ID		Action	Transaction Type	Cleared	Clearing Exception or Exemption Indicator	Day Count Convention	Effective Date	Embedded Option	Event Timestamp	Execution Timestamp	Expiration Date	First Ex Non-Standardize	Notional Amount	Notional Amou											
1112 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Termination	U			2022-01-03	2022-07-05 23:27:47	2022-01-03 21:00:04	2023-12-14	N		3,400													
1113 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Termination	U			2023-12-17	2022-07-05 20:27:54	2022-12-17 21:00:08	2023-10-30	N		29													
1113 Equity_PortfolioSwap_PriceReturnBasicPerformance_Basket	NEW	Termination	U	N		2022-07-01	2022-07-05 20:28:11	2022-07-01 11:50:17				25,000													
1113 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2023-12-03	2022-07-05 20:28:14	2021-12-03 20:59:31	2023-01-03	N		3,600													
1114 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2021-10-04	2022-07-05 20:28:28	2021-10-04 20:00:02	2023-07-31	N		15,000													
1115 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2021-10-08	2022-07-05 20:28:28	2021-10-06 20:00:03	2023-07-27	N		450													
1116 Equity_PortfolioSwap_PriceReturnBasicPerformance_Basket	NEW	Amendment	U	N		ACT/360	2019-06-28	2022-07-05 20:23:31	2019-08-28 01:03:39	2022-12-29	N		18,000												
1117 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2020-11-17	2022-07-05 23:40:11	2020-11-17 21:00:03	2023-05-08	N		3,000													
1118 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Trade	U			2022-07-05	2022-07-05 16:42:10	2022-07-05 19:45:50	2023-01-31	N		3,000													
1119 Equity_ContractForReinsurance_PriceReturnBasicPerformance_SingleName	NEW	Amendment	U			ACT/360	2022-04-14		2022-07-07 23:15:31	2022-06-14 20:25:19	2022-04-16	N	690,000												
1120 Equity_ContractForReinsurance_PriceReturnBasicPerformance_SingleName	NEW	Amendment	U			ACT/360	2022-06-29		2022-07-07 23:15:28	2022-06-28 17:05:06	2022-09-12	N	400,000												
1121 Equity_ContractForReinsurance_PriceReturnBasicPerformance_SingleName	NEW	Amendment	U			ACT/360	2021-10-01		2022-07-07 23:45:15	2021-10-01 20:38:32	2024-10-09	N	110,000												
1122 EQUITY_PORTFOLIOSWAP_PRICERETURNBASICPERFORMANC NEW	Trade	U	N			ACT/360	2022-07-07 07:07	EMBED1	2022-07-07 21:14:50	2022-07-07 21:14:50		N	2,100												
1123 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Termination	U			2021-03-31	2022-07-07 20:10:42	2021-03-31 22:04:39	2023-07-07	N		170,000													
1124 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Trade	U			2022-07-07	2022-07-07 20:18:11	2022-07-07 18:59:25	2020-05-28	N		140,000													
1125 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2022-01-03	2022-07-07 20:19:06	2022-01-03 21:00:04	2023-12-14	N		125,000													
1126 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Termination	U			2022-01-03	2022-07-07 20:19:07	2022-01-03 21:00:04	2023-12-14	N		35,000													
1127 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2019-05-29	2022-07-07 20:19:42	2019-05-29 17:31:09	2023-01-31	N		81,000													
1128 Equity_PortfolioSwap_PriceReturnBasicPerformance_Basket	NEW	Termination	U	N		2022-07-01	2022-07-07 20:20:11	2022-07-01 22:07:01	2022-07-01 21:50:17	N		31,000													
1129 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2021-12-02	2022-07-07 20:20:59	2022-07-07 20:59:44	2020-05-28	N		5													
1130 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2022-01-03	2022-07-07 20:23:24	2022-01-03 21:00:04	2023-12-14	N		170,000													
1131 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2021-12-03	2022-07-07 20:28:43	2021-02-03 20:59:31	2023-01-03	N		2,100													
1132 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Termination	U			2021-12-17	2022-07-07 20:27:13	2021-12-17 21:00:08	2023-10-30	N		35													
1133 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2020-11-17	2022-07-07 20:31:54	2020-11-17 21:00:03	2023-06-08	N		7,500													
1134 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2020-12-15	2022-07-07 20:32:00	2020-12-15 22:13:48	2022-12-13	N		37,000													
1135 EQUITY_PORTFOLIOSWAP_PRICERETURNBASICPERFORMANC NEW	Trade	U	N			ACT/360	2019-07-17	EMBED1	2022-07-01 21:07:21	2022-07-01 21:00:31		N	110,000												
1136 Equity_ContractForReinsurance_PriceReturnBasicPerformance_SingleName	NEW	Amendment	U			ACT/360	2022-04-18		2022-07-07 14:02:41	2022-04-14 20:25:18	2022-04-16	N	390,000												
1137 Equity_ContractForReinsurance_PriceReturnBasicPerformance_SingleName	NEW	Amendment	U			ACT/360	2021-10-01		2022-07-01 10:20:59	2021-10-01 20:28:22	2024-10-03	N	110,000												
1138 Equity_ContractForReinsurance_PriceReturnBasicPerformance_SingleName	NEW	Amendment	U			ACT/360	2022-06-29		2022-07-08 23:22:27	2022-06-29 17:05:06	2023-08-18	N	400,000												
1139 Equity_ContractForReinsurance_PriceReturnBasicPerformance_SingleName	NEW	Amendment	U			ACT/360	2022-04-14		2022-07-08 23:39:50	2022-04-14 20:25:18	2024-04-03	N	670,000												
1140 Equity_ContractForReinsurance_PriceReturnBasicPerformance_SingleName	NEW	Amendment	U			ACT/360	2021-10-01		2022-07-08 23:39:50	2021-10-01 20:25:22	2024-10-03	N	89,000												
1141 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2022-07-07	2022-07-07 20:19:53	2022-07-07 20:19:59	2020-05-28	N		110,000													
1142 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2021-12-17	2022-07-08 20:19:12	2021-12-17 21:00:05	2023-11-09	N		25,000													
1143 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2021-12-02	2022-07-08 20:19:27	2021-12-02 20:59:44	2020-05-28	N		98,000													
1144 EQUITY_PORTFOLIOSWAP_PRICERETURNBASICPERFORMANC NEW	Trade	U	N			ACT/360	2022-07-08 07:08	EMBED1	2022-07-08 20:14:18	2022-07-08 20:14:18		N	310,000												
1145 Equity_PortfolioSwap_PriceReturnBasicPerformance_Essential	NEW	Termination	U			2022-01-03	2022-07-08 20:24:02	2022-01-03 21:00:04	2023-12-14	N		120,000													
1146 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Termination	U			2021-12-17	2022-07-08 20:24:39	2021-12-17 21:00:00	2023-10-30	N		45													
1147 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Termination	U			2022-01-03	2022-07-08 20:26:12	2022-01-03 21:00:04	2023-12-14	N		150,000													
1148 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			2021-12-03	2022-07-08 20:26:31	2021-12-03 20:59:31	2023-01-03	N		8,000													
1149 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Termination	U			2020-11-17	2022-07-08 20:55:20	2020-11-17 21:00:03	2023-06-08	N		34,000													
1150 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Termination	U			2020-12-15	2022-07-08 22:55:23	2020-12-15 22:13:48	2023-12-13	N		120,000													
1151 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Trade	U	N		ACT/350	2022-07-08 07:08	EMBED1	2022-07-08 20:57:12	2022-07-08 20:57:20		N	68,000												
1152 EQUITY_PORTFOLIOSWAP_PRICERETURNBASICPERFORMANC NEW	Trade	U	N			ACT/350	2022-07-08 07:08	EMBED1	2022-07-08 21:01:42	2022-07-08 19:16:57	2025-05-05	N	23,000												
1153 Equity_PortfolioSwap_PriceReturnBasicPerformance_Essential	NEW	Trade	U			ACT/350	2022-07-08 07:08	EMBED1	2022-07-08 21:07:55	2022-07-08 21:07:55		N	8,500												
1154 EQUITY_PORTFOLIOSWAP_PRICERETURNBASICPERFORMANC NEW	Trade	U	N			ACT/350	2022-07-08 07:08	EMBED1	2022-07-08 21:07:34	2022-07-08 21:07:34		N	1,000												
1155 EQUITY_PORTFOLIOSWAP_PRICERETURNBASICPERFORMANC NEW	Trade	U	N			ACT/350	2022-07-08 07:08	EMBED1	2022-07-11 21:09:51	2022-07-08 19:57	2025-05-05	N	4,700												
1156 Equity_PortfolioSwap_PriceReturnBasicPerformance_SingleName	NEW	Increase	U			ACT/350	2022-07-08 07:08	EMBED1	2022-07-11 21:09:01	2022-07-11 21:09:01		N	455												
1157 EQUITY_PORTFOLIOSWAP_PRICERETURNBASICPERFORMANC NEW	Trade	U	N			ACT/350	2022-07-08 07:08	EMBED1	2022-07-11 21:09:33	2022-07-11 21:09:33		N	3,400												

EXHIBIT C

2024 Bonds Trading Data Snapshot For 07/07/22

FINRA DATA

Browse

Tools

> FINRA DATA > FIXED INCOME DATA

Trade History

Real-time trade history for up to three calendar years. For up to 10 years of end of day pricing, see [Trade Activity](#).

Symbol: BBBY4144687 **Issuer Name:** BED BATH & BEYOND INC **Coupon Rate:** 3.749

Maturity Date: 8/1/2024

Start Date

End Date

01/03/2022



07/25/2023



SHOW RESULTS

Total Count: 757

Columns Filter

Filters: Symbol Date Quantity

Symbol	Issuer Name	Date ↑	Quantity	Price	Yield	Time
BBBY4144687	BED BATH & BEYO...	2022-07-07	350000	40.375	56.18524	09:30:08
BBBY4144687	BED BATH & BEYO...	2022-07-07	1000000	40.25	56.388091	14:33:58
BBBY4144687	BED BATH & BEYO...	2022-07-07	1000000	40.5	55.983194	15:41:23
BBBY4144687	BED BATH & BEYO...	2022-07-07	1000000	40.375	56.18524	15:42:18
BBBY4144687	BED BATH & BEYO...	2022-07-07	433000	40.5	55.983194	16:12:49
BBBY4144687	BED BATH & BEYO...	2022-07-07	1000000	40.5	56.79623	15:36:53
BBBY4144687	BED BATH & BEYO...	2022-07-07	400000	39.033	58.406304	16:54:59

EXHIBIT D**Equity Swaps Trading Data Snapshot Leading Up To Termination Of Bonds Exchange Offer On
2023-01-05**

F492	E	F	G	H	I	J	L	M	N	U	V	W
1	Event type	Event timestamp	Amendment Indicator	Asset Class	Product name	Cleared	Execution Timestamp	Effective Date	Expiration Date	Notional amount	Notional amount	Notional currency
460	TRAD	2022-12-31T00:37:46Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-21T22:22:14.	2022-12-23	2032-12-23	52,000			USD
461	TRAD	2022-12-31T00:37:04Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-25T22:09:51.	2022-11-29	2032-11-30	17,000			USD
462	TRAD	2022-12-31T00:37:53Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-22T22:18:46.	2022-12-27	2032-12-24	49,000			USD
463	TRAD	2022-12-31T00:36:10Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-18T22:28:22.	2022-11-22	2032-11-22	20,000			USD
464	TRAD	2022-12-31T00:37:39Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-20T22:27:44.	2022-12-22	2032-12-22	23,000			USD
465	TRAD	2022-12-31T00:37:33Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-19T22:21:29.	2022-12-21	2032-12-22	140,000			USD
466	TRAD	2022-12-31T00:26:54Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-17T21:25:26.	2022-11-21	2029-03-09	2,000,000			USD
467	TRAD	2022-12-31T00:37:27Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-05T22:16:07.	2022-12-07	2032-12-05	8,500			USD
468	TRAD	2023-03-07T21:16:41Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	2023-01-23T20:24:35.	2023-01-23	2024-11-25	29,000			USD
469	TRAD	2022-12-31T00:37:12Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-28T22:19:51.	2022-11-30	2032-12-01	45,000			USD
470	TRAD	2022-12-31T00:44:02Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-02T21:39:24.	2022-11-04	2032-11-04	460,000			USD
471	TRAD	2022-12-31T00:37:20Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-29T22:15:51.	2022-12-01	2032-12-01	76,000			USD
472	TRAD	2023-01-04T01:02:50Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-28T22:19:51.	2022-11-30	2032-12-01	33,000			USD
473	TRAD	2023-01-04T01:02:15Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-17T21:25:26.	2022-11-21	2029-03-09	2,000,000			USD
474	TRAD	2023-01-04T01:02:56Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-29T22:15:51.	2022-12-01	2032-12-01	56,000			USD
475	TRAD	2023-01-04T01:03:11Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-02T21:39:24.	2022-11-04	2032-11-04	530,000			USD
476	TRAD	2023-01-04T01:03:08Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-19T22:21:29.	2022-12-21	2032-12-22	120,000			USD
477	TRAD	2023-01-04T01:03:14Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-21T22:22:14.	2022-12-23	2032-12-23	48,000			USD
478	TRAD	2023-01-04T01:02:36Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-18T22:28:22.	2022-11-22	2032-11-22	15,000			USD
479	TRAD	2023-01-04T00:50:52Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-07T21:33:35.	2022-11-09	2027-11-10	78,000			USD
480	TRAD	2023-01-04T01:03:01Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-05T22:16:07.	2022-12-07	2032-12-08	5,800			USD
481	TRAD	2023-01-04T01:02:45Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-25T22:09:51.	2022-11-29	2032-11-30	13,000			USD
482	TRAD	2023-01-04T01:03:11Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-20T22:27:44.	2022-12-22	2032-12-22	21,000			USD
483	TRAD	2023-01-04T01:03:19Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-12-22T22:18:46.	2022-12-27	2032-12-24	49,000			USD
484	TRAD	2023-03-07T17:20:34Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	2023-02-13T16:35:36.	2023-02-13	2024-11-27	375			EUR
485	TRAD	2023-03-07T17:29:13Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	2023-02-13T16:35:36.	2023-02-13	2024-11-27	190			EUR
486	TRAD	2023-03-07T17:31:05Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	2023-02-13T16:35:36.	2023-02-13	2024-11-27	5			EUR
487	TRAD	2023-03-07T00:46:08Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-02T21:39:24.	2022-11-04	2032-11-04	150,000			USD
488	TRAD	2023-03-07T00:27:28Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2023-02-01T00:26:01.	2023-02-02	2033-02-02	170,000			USD
489	TRAD	2023-03-08T00:52:16Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-02T21:39:24.	2022-11-04	2032-11-04	150,000			USD
490	TRAD	2023-03-08T22:43:55Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	2021-12-17T21:00:06.	2021-12-17	2023-10-30	5			USD
491	TRAD	2022-12-30T00:41:30Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-02T21:39:24.	2022-11-04	2032-11-04	440,000			USD
492	TRAD	2022-12-30T00:34:23Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-17T21:25:26.	2022-11-21	2029-03-09	2,000,000			USD
493	TRAD	2023-03-08T21:28:50Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	2021-12-17T21:00:06.	2021-12-17	2023-10-30	2,700			USD
494	TRAD	2022-12-28T00:56:10Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-02T21:39:24.	2022-11-04	2032-11-04	350,000			USD
495	TRAD	2023-03-09T21:59:53Z	EQ	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	2023-03-09T21:59:53.	2023-03-09	9999-12-31	47,000	47,000	47,000	MXN
496	TRAD	2022-12-29T00:52:54Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerf N	2022-11-02T21:39:24.	2022-11-04	2032-11-04	400,000			USD

Sum: 6,000,000 ▾

EXHIBIT E
**Equity Swaps Trading Data Leading Up To Termination Of Bonds Exchange Offer On 2023-01-05
Published Late**

A492	A	B	C	D	E	F	G	H	I	J
1	Swap Transaction Publish Date	Dissemination Identifier	Original Dissemination Identifier	Action type	Event type	Event timestamp	Amendment indicator	Asset Class	Product name	Cleared
460	2023-03-07	566220347	566149143	MODI	TRAD	2022-12-31T00:37:46Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
461	2023-03-07	566234088	566149926	MODI	TRAD	2022-12-31T00:37:04Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
462	2023-03-07	566234728	566145035	MODI	TRAD	2022-12-31T00:37:53Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
463	2023-03-07	566236602	566149383	MODI	TRAD	2022-12-31T00:38:10Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
464	2023-03-07	566238183	566149940	MODI	TRAD	2022-12-31T00:37:39Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
465	2023-03-07	566239778	566149045	MODI	TRAD	2022-12-31T00:37:33Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
466	2023-03-07	566242085	566148536	MODI	TRAD	2022-12-31T00:26:54Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
467	2023-03-07	566260624	566149534	MODI	TRAD	2022-12-31T00:37:27Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
468	2023-03-07	566163584	563802892	MODI	TRAD	2023-03-07T21:16:41Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	
469	2023-03-07	566196936	566147955	MODI	TRAD	2022-12-31T00:37:12Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
470	2023-03-07	566202550	566149955	MODI	TRAD	2022-12-31T00:44:02Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
471	2023-03-07	566225960	566148571	MODI	TRAD	2022-12-31T00:37:20Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
472	2023-03-07	566147955	497122186	MODI	TRAD	2023-01-04T01:02:50Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
473	2023-03-07	566148536	497110270	MODI	TRAD	2023-01-04T01:02:15Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
474	2023-03-07	566148571	497125004	MODI	TRAD	2023-01-04T01:02:56Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
475	2023-03-07	566148955	565113609	MODI	TRAD	2023-01-04T01:03:11Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
476	2023-03-07	566149045	510435057	MODI	TRAD	2023-01-04T01:03:06Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
477	2023-03-07	566149143	512127397	MODI	TRAD	2023-01-04T01:03:14Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
478	2023-03-07	566149383	497127637	MODI	TRAD	2023-01-04T01:02:36Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
479	2023-03-07	566149529	542987669	MODI	TRAD	2023-01-04T00:50:52Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
480	2023-03-07	566149534	499007986	MODI	TRAD	2023-01-04T01:03:01Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
481	2023-03-07	566149926	497122209	MODI	TRAD	2023-01-04T01:02:45Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
482	2023-03-07	566149940	511148475	MODI	TRAD	2023-01-04T01:03:11Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
483	2023-03-07	566150365	513288004	MODI	TRAD	2023-01-04T01:03:19Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
484	2023-03-07	565982726	564813887	MODI	TRAD	2023-03-07T17:20:34Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	
485	2023-03-07	566012076	565980276	MODI	TRAD	2023-03-07T17:29:13Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	
486	2023-03-07	566018470	566012076	MODI	TRAD	2023-03-07T17:31:05Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	
487	2023-03-07	566113609	542969724	MODI	TRAD	2023-03-07T00:46:08Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
488	2023-03-07	566113729	539409154	MODI	TRAD	2023-03-07T00:27:28Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
489	2023-03-08	566322535	566202550	MODI	TRAD	2023-03-08T00:52:16Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
490	2023-03-08	567435164	567358990	MODI	TRAD	2023-03-08T22:43:55Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	
491	2023-03-08	567440071	566332535	MODI	TRAD	2022-12-30T00:41:30Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
492	2023-03-08	567440519	566242085	MODI	TRAD	2022-12-30T00:34:23Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
493	2023-03-08	567358990	564982228	MODI	TRAD	2023-03-08T21:20:50Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	
494	2023-03-09	568515011	567502214	MODI	TRAD	2022-12-28T00:56:10Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	
495	2023-03-09	568590468	NEWT	MODI	TRAD	2023-03-09T21:59:53Z	TRUE	EQ	Equity PortfolioSwap PriceReturnBasicPerformance N	
496	2023-03-09	567502214	567440071	MODI	TRAD	2022-12-29T00:52:54Z	TRUE	EQ	Equity ContractForDifference PriceReturnBasicPerfN	

Min: 2023-03-07

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

Neelay Das
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-and-

Gabriel Rostom
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Tel : +33756942880

In Re:

BED BATH & BEYOND INC., et al.,
Debtors.¹

Chapter 11

Case No. 23-13359 (VFP)
(Jointly Administered)

U.S. BANKRUPTCY COURT
FILED
NEWARK, NJ

2023 SEP 12 P 2:36

JEANNE M. NAUGHTON

BY: 

**NOTICE OF BED BATH AND BEYOND COMMON STOCK EQUITY INTEREST HOLDERS'
ASSERTION AND PRESERVATION OF RIGHTS OF SETOFF AND RECOUPMENT**

Pursuant to section IV.J.6 of the Debtors' Amended Disclosure Statement [Docket No. 1713] and Article X.F of the Debtors' proposed Amended Joint Chapter 11 Plan [Docket No. 1712], the undersigned holders (the "Stockholders") of equity interests in Bed Bath And

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

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Beyond's Common Stock, which has traded on Nasdaq Exchange under the symbol "BBBY" and now trades over the counter under the symbol "BBBYQ", hereby assert and preserve any and all rights of setoff or recoupment, and provide written notice to the Debtors of such assertion and preservation, to the extent that such rights are or may hereafter become applicable and necessary to be exercised for the recoupment, pursuant to section 542 of the Bankruptcy Code, against borrowed shares of Common Stock of Bed Bath and Beyond ("BBB")², which have been recognized as valuable property of the Debtors' estates pursuant to the Final NOL order approved by this Court in Docket no. 587, in connection with Stockholders' Common Stock Equity Interests in BBB.

Pursuant to section 1129(b)(2)(C)(i) of the Bankruptcy Code the condition for confirmation of a plan to be fair and equitable with respect to the impaired class of Interests in BBB requires that the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest. Since the Stockholders categorized under the fully impaired class of Interests in BBB are not entitled to any fixed liquidation preference or any fixed redemption price, pursuant to the proposed Amended Joint Chapter 11 Plan, they are only entitled to receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest value of such interest. It is a well known fact that as of 2023-08-15 there was a very large open short interest of 76,597,194 shares in Bed Bath And Beyond Common Stock that trades over the counter under the symbol "BBBYQ", as published by FINRA³ based on reports it collects from member firms. If the Plan Administrator, who also functions as the Trustee, requires, pursuant to section 542(a) of the Bankruptcy Code, that entities other than a custodian, in possession, custody, or control of these borrowed shares account for them and deliver them to him/her or a custodian, it will allow the Stockholders to recoup the greatest and fair value of their Interests in BBB as a result of the appreciation in share price that will result from all borrowed shares sold short being bought back, before such interests are canceled and extinguished. The Stockholders

² As described in Paragraph 3 of the "Das Certification" [Docket No. 2068-1]

³ Data available at the following website using the symbol filter BBBYQ:
<https://www.finra.org/finra-data/browse-catalog/equity-short-interest/data>

Case 23-13359-VFP Doc 2192 Filed 09/12/23 Entered 09/20/23 08:54:01 Desc Main Document Page 34 of 38
hereby assert and preserve any and all rights of such recoupment that they may have pursuant to
applicable law.

Date: 09/11/2023



Neelay Das

Date: 09/11/2023



Gabriel Rostom

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Tel : +33756942880

Chapter 11

Case No.: 23-13359 (VFP)

(Joint Administration Requested)

In Re:

BED BATH & BEYOND INC., et al.,
Debtors.⁴

CERTIFICATION OF SERVICE

1. I, Neelay Das:

represent _____ in this matter.

am the secretary/paralegal for _____, who represents
_____ in this matter.

am a Common Stock Equity Security Holder in this case and am representing myself.

2. On September 11, 2023, I sent a copy of the following pleadings and/or documents to the
parties listed in the chart below.

⁴ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

*a. NOTICE OF BED BATH AND BEYOND COMMON STOCK EQUITY INTEREST**HOLDERS' ASSERTION AND PRESERVATION OF RIGHTS OF SETOFF AND
RECOUPMENT*

3. I hereby certify under penalty of perjury that the above documents were sent using the mode of service indicated.

Date: September 11, 2023


 Neelay Das

Name and Address of Party Served	Relationship of Party to the Case	Mode of Service
Honorable Vincent F. Papalia United States Bankruptcy Court District Of New Jersey 50 Walnut Street 3rd fl. Newark, NJ 07102 chambers_of_vfp@njb.uscourts.gov	United States Bankruptcy Judge for the District of New Jersey	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input checked="" type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other
Joshua A. Sussberg, P.C., Emily E. Geier, P.C., Derek I. Hunter, and Ross J. Fiedler Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022 ross.fiedler@kirkland.com emily.geier@kirkland.com derek.hunter@kirkland.com joshua.sussberg@kirkland.com	Counsel to the Debtor	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other
Michael D. Sirota, Warren A. Usatine, and Felice R. Yudkin Cole Schotz P.C. Court Plaza North 25 Main Street Hackensack, NJ 07601 msirota@coleschotz.com wusatine@coleschotz.com fyudkin@coleschotz.com	Counsel to the Debtor	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other

Name and Address of Party Served	Relationship of Party to the Case	Mode of Service
Marshall S. Huebner Michael Pera Adam L. Shpeen Steven Z. Szanzer Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 marshall.huebner@davispolk.com michael.pera@davispolk.com adam.shpeen@davispolk.com steven.szanzer@davispolk.com	Counsel to the Prepetition ABL Agent	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other
Alexandria Nikolinos U.S. Department of Justice Office of the US Trustee One Newark Center 1085 Raymond Boulevard Suite 2100 Newark, NJ 07102 alexandria.nikolinos@usdoj.gov	Counsel to US Trustee	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other
Fran B. Steele U.S. Department of Justice Office of the US Trustee One Newark Center Suite 2100 Newark, NJ 07102-5504 Fran.B.Steele@usdoj.gov	Counsel to US Trustee	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other
Robert J. Feinstein Bradford J. Sandler Paul J. Labov Colin R. Robinson Pachulski Stang Ziehl & Jones, LLP 780 Third Avenue, 34th Floor New York, NY 10017 rfeinstein@pszjlaw.com bsandler@pszjlaw.com plabov@pszjlaw.com crobinson@pszjlaw.com	Counsel to the Official Committee of Unsecured Creditors	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other
David M. Hillman and Charles A. Dale Megan Volin Proskauer Rose LLP Eleven Times Square New York, NY 10036 dhillman@proskauer.com cdale@proskauer.com mvolin@proskauer.com	Counsel for the DIP Agent	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other

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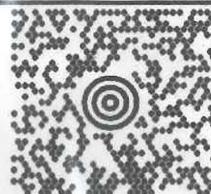
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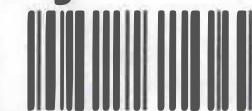
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NEWARK NJ 07102

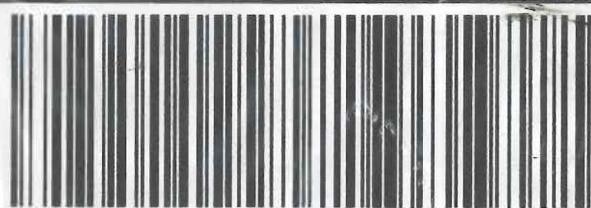


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